For the Northern District of California

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENIO PAZ PENA,) No. C 12-01434 JW (PR)
Plaintiff,	ORDER OF DISMISSAL
vs.	
SERGEANT VAN BLARCOM, et al.,	
Defendants.)

Plaintiff, a state prisoner, filed the instant pro se prisoner complaint under 42 U.S.C. § 1983, alleging that prison officials at San Quentin State Prison violated his constitutional rights when they lost his property during a prison transfer. Plaintiff raised the same allegations in another prisoner complaint filed in this Court, which was dismissed because it failed to state a claim for relief under § 1983. See Pena v. Van Blarcom, et al., No. C 11-5205-JW (PR), Order of Dismissal filed and judgment entered February 2, 2012.

A prisoner complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of 28 U.S.C. § 1915A. Cf. Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988)) (duplicative in forma

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<u>pauperis</u> complaint may be considered abusive and dismissed under 28 U.S.C.
§ 1915). Because plaintiff raised and litigated the same allegations and claims
raised herein in Pena v. Van Blarcom, et al., No. C 11-5205-JW (PR), the instant
complaint is deemed duplicative and abusive under § 1915A. That plaintiff adds an
additional defendant in this later-filed action does not compel a different result. See
Bailey, 846 F.2d at 1021 (complaint repeating same allegations asserted in earlier
case, even if now filed against new defendants, is subject to dismissal as
duplicative). To the extent that plaintiff's complaint in this action seeks
reconsideration of the Order of Dismissal in Pena v. Van Blarcom, et al., No. C 11-
5205-JW (PR), plaintiff's request is without merit.

The complaint is DISMISSED with prejudice as duplicative under the authority of 28 U.S.C. § 1915A(b). The clerk shall enter judgment in accordance with this order, terminate all pending motions therein, and close the files.

IT IS SO ORDERED.

DATED: March 26, 2012

United States District Chief Judge